



# Department of Justice

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## **JUSTICE DEPARTMENT REQUIRES ACTUARIAL CONSULTANTS TO HALT ANTICOMPETITIVE INFORMATION EXCHANGE**

WASHINGTON, D.C. - The Department of Justice announced today that it has reached a settlement that will require Professional Consultants Insurance Company Inc. (PCIC), and its actuarial consulting firm members, to stop sharing among themselves and with other actuarial consulting firms certain information on the use of contractual limitations of liability (LOL) in their dealings with clients. Today's action will restore competition among actuarial consulting firms on an important term in their client contracts, the Department said.

The Department's Antitrust Division filed a civil complaint in the U.S. District Court in Washington, D.C., alleging that PCIC, its members, and other actuarial consulting firms exchanged competitively sensitive information about their use of LOL in providing actuarial consulting services to employee benefit plans, in violation of Section 1 of the Sherman Act. At the same time, the Department filed a proposed consent decree that, if approved by the court, would resolve the lawsuit and the Department's competitive concerns.

"Public and private sponsors and administrators of pension funds and other employee benefit plans require no less than free and unfettered competition among their actuarial service providers," said J. Bruce McDonald, Deputy Assistant Attorney General in the Department's Antitrust Division. "It is essential to preserve and maintain competition in this important industry that affects the retirement and benefit funds of our nation's workers."

PCIC, located in Burlington, Vermont, provides its members with professional liability insurance. PCIC's members are competing actuarial consulting firms that provide actuarial risk analysis and management services to clients engaged in financial businesses and services, including pension funds and other benefit plans established to serve public or government employees, private corporate employees, and members of labor unions.

According to the complaint, actuarial consulting firms historically served their clients under terms that did not limit the consultants' liability for damages due to actuarial mistakes, which can result in substantial monetary losses or other damages to pension funds or other employee benefit clients. The complaint alleges that as early as 1999, PCIC's members began to consider requiring clients to accept LOL, which would contractually limit the amount of damages recoverable by the clients to a specified dollar amount, multiple of fees paid by a client, or certain types of damages sustained by a client. The complaint further alleges that PCIC unlawfully enabled and facilitated communications among its members and other actuarial consulting firms with respect to competitively sensitive information about firms' implementation and planned usage of LOL; that these communications facilitated decisions of PCIC members and other competitors to implement LOL; and that as a result, employee benefit clients were denied significant competition among the actuarial consultants in their setting of contract terms.

The proposed consent decree aims to prevent PCIC and its members from sharing LOL information among themselves, or with other providers of actuarial consulting services, in a manner that may significantly lessen competition. Under the proposed decree, PCIC must require, as a condition of PCIC membership, that its members be fully bound by the terms of the decree. The decree prohibits PCIC and its members from communicating among themselves about LOL, except to a specified extent and subject to safeguards reflecting PCIC's reasonable

need for and use of LOL information to provide its members with professional liability insurance coverage. The decree also prohibits PCIC and its members from entering into or participating in any agreement, among themselves or with any other providers of actuarial consulting services, as to any actual or potential use of LOL; and it prohibits PCIC and its members from communicating with other providers of actuarial consulting services as to any firm's current or future plans, policies, or practices relating to the use of LOL. In addition, the decree requires PCIC and its members to establish antitrust compliance programs and notification procedures.

As required by the Tunney Act, the proposed consent decree, along with the Department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed decree during a 60-day comment period to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the consent decree upon a finding that it serves the public interest.

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